EME COURT, U.S.
Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-6551

SAMUEL C. CARRATT, JR., *Petitioner*

v.

COMMONWEALTH OF VIRGINIA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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OCTOBER TERM, 1974

No.

SAMUEL C. CARRATT, JR., *Petitioner*

v.

COMMONWEALTH OF VIRGINIA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

Petitioner prays that a Writ of Certiorari issue to review a judgment of the Supreme Court of Virginia entered on June 10, 1974, affirming the judgment of conviction of the Circuit Court of Albemarle County on January 5, 1973.

OPINION BELOW

On June 10, 1974 the Supreme Court of Virginia announced in an opinion that there was no reversible error in the judgment of the Circuit Court of Albemarle County, and affirmed the Petitioner's conviction

for possession of lottery equipment. The Opinion of the Supreme Court of Virginia dated June 10, 1974 and the Order of the Supreme Court of Virginia dated August 28, 1974 are set forth in the Appendix, *infra.*

JURISDICTION

The judgment of the Supreme Court of Virginia was entered on June 10, 1974. On August 28, 1974 the Petition for a Rehearing was denied. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

A. Whether It Was Error To Rule That Probable Cause Existed for a No-Knock Entry of the Petitioner's Home in Violation of the Fourth and Fourteenth Amendments to the Constitution of the United States?

B. Whether It Was Error Not To Require Police Officers To Obtain Authorization From a Magistrate Prior To Making a No-Knock Entry of the Petitioner's Home in Violation of the Fourth and Fourteenth Amendments of the Constitution of the United States?

C. Whether It Was Error To Allow Evidence To Be Used Against the Petitioner Which Had Been Suppressed in a Prior Proceeding in Violation of the Fourth and Fourteenth Amendments of the Constitution of the United States?

STATEMENT OF THE CASE

On July 16, 1972, Petitioner was arrested at his home in the pre-dawn darkness as the result of a search of his house by police officers acting under a search warrant. The search was later found by the trial court to

be a no-knock entry. Items such as worksheets covering a three day period, accounting sheets, bank balance slips, and $3,861.00 in small denominations were seized. These items were introduced at the trial of the case, and were the sole basis for the prosecution's case.

On October 22, 1974, Petitioner was indicted for a violation of § 18.1-318.1 of the Code of Virginia, 1950, as amended, which prohibits the operation of an illegal gambling business and carries a penalty of five years and a $20,000 fine. § 18.1-318.1 (b) (2) (I) and slips, and $3,861.00 in small denominations were seized. (b) (2) (II) define an illegal gambling operation as one which involves "five or more persons" and "which remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000.00 in any single day."

Hearings were held on November 17th and November 24th, 1972, on Petitioner's Motion to Suppress the items seized as violating Petitioner's rights under the Fourth and Fourteenth Amendments of the United States Constitution in that the search was illegal because a no-knock entry was used and the search warrant itself was fatally defective. The evidence before the trial court on the question of legality of the no-knock entry indicated that the arresting officers had had the Petitioner under surveillance for a year prior to the arrest under the suspicion that he was operating an illegal gambling business. The search warrant was obtained on July 16, 1974 because the officer in charge, Officer Deavers, felt that the Petitioner had discovered the police surveillance the day prior to the arrest.

The officers decided sometime prior to arriving at the Carratt residence that a no-knock entry would be

necessary, due to information they had received from an unnamed informant. The informant had told Officer Deavers that the evidence of the crime could easily be destroyed, but did not tell Officer Deavers what kind of evidence would be found at the Carratt residence, or whether any would be found at all. Officer Deavers assumed from the informant's information that "rice" or "flash" paper was involved. Officer Deavers was also told by the informant that the petitioner, Carratt, would destroy the evidence, and that he had a gun in his home and was capable of using it.

The record does not disclose, however, upon what information the informant based his assertions, nor what evidence gave the officers reason to believe it was correct. The evidence before the Court showed that the Carratt residence had been kept under continuous surveillance from 9:00 p.m., the night before by a police officer and that no activity had been observed after 2:00 a.m. Officer Deavers testified that he knew that Mr. Carratt was crippled and that when he and his officers arrived at the house, there was no evidence of any person being awake or moving about inside the house, and that his men had completely surrounded the house prior to the entry.

On November 24, 1972, the trial court ruled that the no-knock entry was justified because the officers had probable cause to believe that the evidence would be destroyed, but quashed the indictment and suppressed the use of any of the seized items in the prosecution of the Petition under § 18.1-318.1 of the Code of Virginia because the trial court found that the Justice of the Peace who issued the search warrant had not found probable cause for a violation of § 18.1-318.1 of the Code of Virginia.

The trial court denied Petitioner's request that the items seized on July 16, 1972, be returned to him, and ruled that the Commonwealth of Virginia could retain the Petitioner's property. On November 27th, 1972, the Albemarle County Grand Jury returned an indictment against the Petitioner charging a violation of § 18.1-340 of the Code of Virginia, 1950, as amended. § 18.1-340 of the Code of Virginia provides a misdemeanor penalty for the operation of a lottery, or the buying or selling of chances, or the possession of lottery equipment.

Petitioner was tried and convicted of violating § 18.1-340 on December 12, 1972. Prior to trial, Petitioner renewed his objection to the introduction of the seized property as made on November 17 and 24, 1972, and raised the additional objection that the evidence having once been suppressed against the Petitioner, it could not be used in any other proceeding against him under the doctrine of *Silverthorne Lumber Company* v. *United States*, 251 U.S. 385 (1920). The Court overruled the Motion. On January 5, 1973, the verdict of the jury, a one year sentence and a $500.00 fine, was imposed.

Appeal was taken to the Supreme Court of Virginia on the grounds that the search warrant failed to specify an offense as required by Virginia law, and on the grounds that there were no exigent circumstances justifying a no-knock entry, under both the Federal and State constitutions. The question of whether authorization should have been obtained for a no-knock entry from the magistrate was raised in the brief also.

On June 10, 1974, the Supreme Court of Virginia affirmed the judgment of the Circuit Court of the County of Albemarle and ruled that exigent circumstances existed which justified a no-knock entry and that the

search warrant sufficiently specified a crime under Virginia law. The trial court's ruling that the evidence seized could not be used in a prosecution of Petitioner for violation of § 18.1-318.1 was not considered by the Virginia Supreme Court in its ruling.

A timely Petition for a Rehearing was filed with the Virginia Supreme Court raising again the question of the exigent circumstances which allegedly justified the no-knock entry and raised in that court the question of whether the trial court's suppression of the property of the Petitioner for a prosecution under § 18.1-318.1 suppressed the property for use in any other prosecution under the doctrine of *Silverthorne Lumber Company* v. *United States (supra)*. A supplement to the Petition for Rehearing, filed after the time allowed for a Petition for Rehearing, raised the question of whether or not Rule 3A:28 of the Supreme Court of Appeals of Virginia, the Virginia counterpart of Federal Rules of Criminal Procedure 41 E, required the suppression of the evidence used in the prosecution of the Petitioner under § 18.1-340, as a matter of State, not Federal law.

On August 28, 1974, the Petition for a Rehearing was denied without comment by the Supreme Court of Virginia.

REASONS FOR GRANTING THE WRIT

A. THE POLICE DID NOT HAVE PROBABLE CAUSE TO BREAK AND ENTER SAMUEL C. CARRATT'S HOME WITHOUT ANNOUNCEMENT.

The plurality opinion in *Ker* v. *California*, 374 U.S. 23 (1963) empowered police officers to break and enter the homes of persons suspected of crimes when the police had probable cause to believe that the occupant had discovered the police surveillance, had demon-

strated, through furtive conduct, an intent to evade or foil the police, and was in the possession of easily destructible evidence (374 U.S. at p. 40). Left unanswered by the decision in *Ker* was the question of the quantum of evidence necessary to constitute probable cause to believe these exigent circumstances exist.

The Supreme Court of Virginia, in refusing to suppress the evidence seized from Petitioner's home, found that probable cause existed for breaking and entering the Petitioner's home because: (1) the informant had told the police that the Petitioner would destroy the evidence if the Petitioner knew the police were looking for him; (2) the informant had told Officer Deavers that the Petitioner had a .38 revolver in his home and was capable of using it; (3) the informant had told Officer Deavers that the Petitioner possessed easily destructible evidence; (4) the police suspected that the Petitioner had discovered the police surveillance. *Carratt* v. *Commonwealth*, 215 Va. 55, at p. 59, 205 S.E. 2d 653 at page 656 (1974).

Since the separate grounds relied upon by the Commonwealth of Virginia present varying problems, they will be dealt with separately.

1. The Police Had No Substantial Basis for Relying on an Informant's Statement that the Petitioner Had a Gun in His Home, and Would Destroy the Evidence.

The first two exigent circumstances relied upon by the Supreme Court of Virginia in sustaining the Petitioner's conviction in this case, that Officer Deavers had been told by the informant that the Petitioner would destroy the evidence and that the Petitioner kept a gun in his home, fail to meet the criterion of a clear line of decisions set down by this Court in *Draper*

v. *United States*, 358 U.S. 307 (1959); *Jones* v. *United States*, 362 U.S. 257 (1960); *Aguilar* v. *Texas*, 378 U.S. 108 (1964); *Spinelli* v. *United States*, 393 U.S. 410 (1969); *Whiteley* v. *Warden of Wyoming State Penitentiary*, 401 U.S. 560 (1971); and *Harris* v. *United States*, 403 U.S. 573 (1971) that the bare assertion of facts by an unnamed informant to a police officer, absent corroboration, will not constitute probable cause for a no-knock entry (*Ker* v. *California*, 374 U.S. 23, at p. 36 [1963].) *Draper* found that an unnamed informant's statements would support a finding of probable cause by a police officer if they could be ". . . corroborated by the agent's observations as to the accuracy of the informant's description of the accused, and of his presence at a particular place . . .", even though ". . . the corroborative elements . . . were innocuous in themselves . . ." (*Ker* v. *California*, 374 U.S. at p. 36 [1963].) *Spinelli* and *Aguilar* carried the *Draper* analysis forward in the context of the Magistrate's function of finding probable cause, and required that an affiant bringing information before a Magistrate show reasons why the informant's statements should be believed, and what the underlying circumstances are which give the informant's reports credibility. *Harris* emphasized that the personal observation by an informant of crimes through participation in the crimes gave sufficient grounds for crediting the informant's report because the informant necessarily declared against his penal interests.

In the present case, none of the requirements of these cases is met. No amount of information showing the informant's reliability could obviate the problem in this case, because the truth or credibility of what the informant told Officer Deavers could not be substantiated by the informant's credibility or relia-

bility. The informant's assertion that the Petitioner had a gun in his home and was capable of using it, and that he would destroy the evidence was an assumption beyond the realm of the informant's personal experience and observation, and at best was based upon rumor. The fact that the informant may have been known to Officer Deavers to be reliable does not give his statement credibility, for the informant was passing information which, unknown to the informant, could have been unreliable. Nowhere in the record does it appear that the informant ever entered the Petitioner's home to determine for himself whether the Petitioner had a gun in his bedroom or not, and nowhere does it appear even that the informant ever had any dealings with the Petitioner.

The information which the informant passed on did not constitute a declaration against the penal interests of the informant, and cannot be rescused by *Harris*. Nor can it be saved by the fact that the information given to the officers in the affidavit for the search warrant. The statements of the informant could have been made months before the informant ever became involved in the Petitioner's affairs.

2. The Informant's Statements Did Not Provide Probable Cause To Believe Exigent Circumstances Existed.

Independent of the *Spinelli-Harris* problem of corroboration, there remains the problem in this case that information in the nature of generalized statements about human conduct does not suffice to show probable cause in a particular case, regardless of whether it comes from an officer's experience with easily destructible evidence and criminals possessing the same, *United States* v. *Likas*, 448 F. 2d 607, (7th Cir. [1971]); *United States* ex rel. *Ametrano* v. *Gable*, 401

F. 2d 165 (3rd Circ. 1968); *Meyer* v. *United States*, 282 F. 2d 398 (4th Circ. 1960); *People* v. *DeSantiago*, 76 Cal. Rptr. 809, 453 P. 2d 353 (1969); *Commonwealth* v. *DeMichael*, 422 Pa. 553, 277 A. 2d 159 (1971), or whether that information comes from an informant. *People* v. *Marquez*, 77 Cal. Rptr. 907, -- P. 2d — (1969). This Court, in *Vale* v. *Louisiana*, 399 U.S. 30 (1970) in a search incident to a lawful arrest case, ruled that the possible destruction of evidence would not constitute probable cause for breaking and entering a house, absent a showing of some specific circumstances indicating that evidence was actually being destroyed. There is no information in the record before the trial court to assume that the informant's information came from any other source than the informant's feeling that since the evidence was readily destructible, it would be destroyed. *Marquez* rejected the contention that generalized statements from an informant concededly well informed about the Defendant's operations that he would destroy the evidence were reliable absent a showing of the facts underlying the assertion.

Even accepting the statement at face value that the Petitioner kept a weapon in his house and was capable of using it, probable cause for a no-knock entry can not rest on that fact alone. Indeed, it would be a dubious privilege to "keep and bear arms" if by exercising that right a citizen empowered the constable to batter down his doors in the night. *Ker* required a showing of some sort of intent from a suspect act before a statement of this bland sort could give life to a reasonable apprehension of danger. Applying these principles to a proper situation, the 9th Circuit in *Gilbert* v. *United States*, 366 F. 2d 923 (1966), cert.

den. 388 U.S. 922 (1967), upheld a no-knock entry where the police, in investigating the shooting death of an officer, learned from a robbery suspect who had been mortally wounded in the shoot-out with the dead officer, that the dying robber's confederate in the attack was armed and possibly hiding in a certain apartment. California has sustained no-knock entries where the police show from reliable information that specific circumstances exist causing peril to the officers, as where the suspect is shown to be in the habit of answering the door armed with a 12 gauge shotgun. *Parsley* v. *Superior Court, Riverside County,* 104 Cal. Rptr. 643, 428 P.2d 477 (1973); *People* v. *Dumas,* 190 Cal. Rptr. 512 P. 2d 1208 (1973).

Taken at face value, the allegations of the informer that a suspect has a gun in his home and is inclined to destroy evidence do not constitute probable cause for a no-knock entry. Absent a specific showing that the presence of a gun is in such circumstances as to show a reasonable danger to officers, or a reasonable showing that the suspect is about to destroy, or is in fact destroying, evidence, the Fourth Amendment does not allow a no-knock entry.

3. The Presence of Easily Destructible Evidence Alone Does Not Constitute Probable Cause for a No-Knock Entry.

The third ground relied upon by the Supreme Court of Virginia in sustaining the no-knock entry in this case was that the evidence itself was easily destructible. *Ker* v. *California* required, however, a totality of circumstances tending to show a purpose on the part of a suspect to destroy evidence in requiring a showing of furtive conduct on the part of the suspect (374 U.S. at p. 40). In *Ker,* the suspect made a U-turn and

eluded police after apparently discovering that the police were following him. The lower federal courts and the State courts, in following the *Ker* decision, have uniformly ruled that the mere fact that evidence is destructible does not constitute probable cause for a no-knock entry. *United States* v. *Likas, (supra)*; *United States* ex rel. *Ametrane* v. *Gable, (supra)*; *Meyer* v. *United States, (supra)*; *United States* v. *Gable*, 276 F. Supp. 555 (D.C. Pa. 1967); *State* v. *Mendoza*, 104 Ariz. 395, 454 P. 2d 140 (1969); *Parsley* v. *Superior Court, Riverside County*, 104 Cal. Rptr. 643, 428 P. 477 (1973); *State* v. *Daniels*, Minn. —, 200 N.W. 2d 403 (1972); *Comm.* v. *DeMichael, supra.*

4. The Alleged Discovery of Police Surveillance by the Petitioner Does Not Constitute Probable Cause for a No-Knock Entry.

The assertion by the officers that they felt that the Petitioner had discovered their surveillance and was therefore motivated to destroy the evidence is insufficient to authorize a no-knock entry under *Ker* and is, in fact, belied by the leisurely manner in which a search warrant was obtained and executed in this case. *Ker* sustained a finding of probable cause where the defendant made furtive actions and eluded the police after having been discovered. In the present case, the record before the trial court discloses no such action by the Petitioner.

The alleged discovery of the police surveillance took place on the afternoon of the day prior to the raid on the Petitioner's home. The officers allowed a period of time well in excess of twelve hours to elapse before execution of the search warrant. The claimed concern of the police that the defendant would destroy the evidence when confronted by police officers borders on the preposterous, as the time lapse would have allowed

the defendant ample time to destroy every incriminating item and to warn his confederates, thereby frustrating the entire police operation.

5. An Examination of All the Circumstances Known to the Police Did Not Reveal Probable Cause for a No-Knock Search.

Brinegar v. *United States*, (338 U.S. 160, [1949]) found that the proper perspective for a determination of probable cause was from the standpoint of "a man of reasonable caution." (338 U.S. at p. 175-176). Looking at the Carratt situation as a whole, rather than selectively as the police chose to do, reveals that probable cause did not exist for a no-knock entry. The Carratt residence had been kept under surveillance for nine hours preceding the break-in. No activity had been observed in the house since 2:00 a.m. the morning of the 16th. Every indication was that the Petitioner and his family were sound asleep. At the time of the entry, the house had been entirely surrounded by police officers, thereby preventing any sort of escape, and putting the police in a position to detect any attempt to destroy the evidence. Officer Deavers knew that the Petitioner was crippled and that any quick movements on his part, even while fully awake, were restricted. The officers stated their suspicion that the Petitioner had, in fact, been alerted to their investigation. A man of reasonable caution would have known that the Petitioner would have had more than sufficient time to destroy all the evidence and completely disband his operation. They could also draw the conclusion from their own observations of the situation as this Court did in *Sabbath* v. *United States*, 391 U.S. 585, at p. 589 (1968), that if there was to be any peril to the officers, a forced entry was more likely to precipitate it.

In spite of clear evidence refuting the alleged reasons of the police for entering the Carratt home without announcement, they chose to do so. The Petitioner contends that the decisions of this Court forbid such action, and requests that his conviction be reversed.

B. PETITIONER'S RIGHTS UNDER THE FOURTH AMENDMENT WERE VIOLATED BY THE POLICE OFFICER'S FAILURE TO OBTAIN A WARRANT AUTHORIZING A NO-KNOCK ENTRY.

This Court is facing for the first time the question of whether police officers who know of the alleged grounds for a no-knock entry well in advance of the time the actual search warrant is obtained and executed, must obtain prior authorization from a magistrate for a no-knock entry.

Investigator Deavers and his assistants knew long in advance of the actual search the reasons why they would make a no-knock entry of the Petitioner's home. In fact, they had agreed upon a no-knock entry before arriving at the Petitioner's home. It is petitioner's position that when, as here, the officers knew well in advance of the actual search the reasons allegedly establishing probable cause for a no-knock entry, they should be required to obtain authorization from a magistrate for such an entry.

The quintessential feature of the Fourth Amendment's prohibition against unreasonable searches and seizures is the requirement that police officers obtain authorization for such searches from a neutral magistrate, in order to protect the citizenry from officers whose judgment is too often clouded by their eager participation in the "competitive business of ferretting out crime". *Johnson* v. *United States*, 333 U.S. 10, at page 14 (1947); *McDonald* v. *United States*, 335

U.S. 451 (1948); *Chimel* v. *California,* 395 U.S. 752 (1969); *Coolidge* v. *New Hampshire,* 403 U.S. 443 (1971). Only in certain well-defined situations, where requiring the officer to obtain a warrant would in effect put the Fourth Amendment in the position of impeding proper law enforcement rather than protecting society at large, has this requirement been waived. *Carroll* v. *United States,* 267 U.S. 132 (1925); *Katz* v. *United States,* 389 U.S. 347 (1967); *Terry* v. *Ohio,* 392 U.S. 1 (1962); *Chimel, supra.*

The warrant requirement has served not only to regulate the fact of the search itself, but the incidents of the search such as time, manner, place, items to be seized, and the grounds for the search. It is the Petitioner's position that the question of whether the police have grounds to make a no-knock entry should be determined by a magistrate in the same manner as any other incident of the search.

The policy of protection afforded by the magistrate's function is in accord with such a requirement. A forcible entry, under the circumstances of this case, is just as much an unreasonable search as a search without a warrant, and the Fourth Amendment is designed to protect against it. *Gouled* v. *United States,* 255 U.S. 298 (1921). This Court found that "the requirement of prior notice of authority and purpose before forcing entry into a home is deeply rooted in our heritage and should not be given grudging application" in *Miller* v. *United States,* 357 U.S. 301, at page 313 (1958). Indeed, four justices of this Court found the requirement of announcement to be inherent in the Fourth Amendment itself. (*Ker* v. *California,* opinion of Brennan, J. at pages 46-54). Before a citizen is

subjected to this type of invasion of his constitutional rights, a neutral magistrate should determine if such action is warranted when the officers have time to obtain a warrant.

Not only is the policy behind the Fourth Amendment requirement of a warrant in accord with Petitioner's position, but the failure to require prior authorization from a magistrate for a no-knock entry would leave the Fourth Amendment a stop-gap measure, instead of one of the fundamental liberties of the American constitutional system. As demonstrated by this case, once an officer has obtained a search warrant, and the suspect has done nothing to abdicate his Fourth Amendment rights, such as by giving the officers reason to believe he actually is attempting to foil or evade the law by destroying evidence, the dispassionate search warrant procedure can still produce a letter of reprise, a warrant to sack as well as search the home of a suspect. Requiring a magistrate to review such action in advance would stop the illegal practice before it starts, thereby preventing the unnecessary police tactics of which this Petitioner complains.

C. HAVING ONCE SUPPRESSED THE EVIDENCE IN A PROSECUTION OF THE PETITIONER, THE TRIAL JUDGE COULD NOT LATER ALLOW THE EVIDENCE TO BE USED AGAINST THE PETITIONER IN ANOTHER PROSECUTION.

The determination by the trial judge on November 24, 1972 that the issuing magistrate had not found probable cause for the issuance of a warrant for a search of the Petitioner's home for a violation of 18.1-318.1 of the Code of Virginia rendered the search of the Petitioner's home illegal. *Aguilar* v. *Texas*, 378 U.S. 108 (1964); *Chambers* v. *Maroney*, 399 U.S. 42 (1969); *Whiteley* v. *Warden of Wyoming State Penitentiary*, 401 U.S. 560 (1971).

The only jurisdiction the trial court had over the Petitioner or his property at the time of the hearing on November 24, 1972, was by virtue of an indictment returned against the Petitioner on November 22, 1972, charging a violation of § 18.1-318.1 of the Code of Virginia, 1950 as Amended. The trial Court could not empower the Commonwealth of Virginia to retain the evidence seized, after suppressing it under that indictment. Petitioner had a right guaranteed by the Constitution to the return of his property once the trial judge found that probable cause did not exist for a search of the Petitioner's home for a violation of § 18.1-318.1. *Boyd* v. *United States*, 116 U.S. 616 (1886); *Weeks* v. *United States*, 232 U.S. 383 (1914); *Silverthorne Lumber Co.* v. *United States*, 251 U.S. 385 (1920); *Go-Bart Co.* v. *United States*, 282 U.S. 343 (1931); *Byars* v. *United States*, 273 U.S. 28 (1927); *Gouled* v. *United States*, 255 U.S. 298 (1921); *United States* v. *Lefkowitz*, 285 U.S. 452 (1932); *Johnson* v. *United States*, 333 U.S. 10 (1947); *Trupiano* v. *United States*, 334 U.S. 699 (1948); *United States* v. *Calandra*, 465 F. 2d 1218 (6th Cir. 1972); *United States* v. *Napela*, 28 Fed. 2d 898 [1920] D.C. N.Y.); *United States* v. *Festa*, 192 F. Supp. 160 (D.C. Mass. 1960); *United States* v. *LeClair*, 315 F. Supp. 850 (E.D. Wisc. 1970); cf. Rule 41(E) Federal Rules of Criminal Procedure.

Having once suppressed the seized evidence against the Petitioner, the trial court could not later allow it to be introduced in a subsequent prosecution of the Petitioner. *Wong Sun* v. *United States*, 371 U.S. 471 (1963); *Silverthorne Lumber Co., supra.* As expressed by Justice Holmes in *Silverthorne*, "The essence of a provision forbidding the acquisition of evidence in a

certain way is that not merely evidence so acquired shall not be used before the Court but that it should not be used at all." (251 U.S. at p. 385).

CONCLUSION

For the reasons set forth above, this Petition for Certiorari should be granted.

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